

PLANNING COMMISSION MINUTES

March 22, 2000

CALL TO ORDER: Chairman Dan Maks called the meeting to order at 7:03.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Dan Maks, Planning Commissioners Vlad Voytilla, Eric Johansen, Betty Bode and Sharon Dunham. Commissioners Charles Heckman and Tom Wolch were excused.

Senior Planner Barbara Fryer, AICP and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Maks, who presented the format for the meeting.

VISITORS:

Chairman Maks asked if there were any visitors in the audience wishing to address the Commission on any non-agenda items. There were none.

OLD BUSINESS:

PUBLIC HEARING:

Chairman Maks opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items.

CONTINUANCE:

A. CPA 99-00005/CPA 99-00006 – LOCAL WETLAND INVENTORY

(Continued from February 9, 2000)

The proposed amendment implements Periodic Review Order #00717 (formerly WO #00628), Work Task #3 – Goal 5 Inventory. This work task amends Beaverton's Comprehensive Plan by adding supporting data to the Local Wetland Inventory and Riparian Assessment and text to the Comprehensive Plan explaining the purpose of the map. The map amendment (CPA 99-00005) would bring the City of Beaverton Comprehensive Plan Maps up to date with respect to

Natural Resources by implementing Goal 5 requirements to prepare and adopt a Local Wetland Inventory and Riparian Assessment.

The map proposal amends Beaverton's Comprehensive Plan Significant Natural Resource map to update the 1984 data by adding Local Wetland Inventory and Riparian Assessment map areas, information required under Statewide Planning Goal 5. The Map was prepared according to the methodology prescribed by Goal 5 implementing regulations (OAR 660-23-090 and OAR 660-23-100). The text portion of the amendment (CPA 99-00006) adopts the supporting documents, including the methodology Goal 5 Local Wetland Inventory and Riparian Assessment regulations (OAR 660-23-090 and OAR 660-23-100).

Senior Planner Barbara Fryer noted that the proposal had been modified to some extent and that three letters had been received, to date, providing additional comment in areas that may not include appropriate wetland boundaries. She observed that she expects additional testimony tonight to that effect. She referred to a letter from Robert and Kathryn Randall and another from Nathalie Darcy, copies of which have been distributed, designating Golf Creek, SW of Canyon Road and 96th Avenue. Noting that this has not been verified, she explained that she has not yet had the opportunity to obtain the necessary information from the Division of State Lands or Washington County in terms of the exact wetland delineation. She mentioned a third letter from Laura Hill, representing the Friends of Rock, Bronson and Willow Creeks, requesting that the Public Hearing be continued, as recommended by staff, until April 12, 2000, to allow her group additional time to review the document. Noting that the document had only been mailed on Friday, March 17, 2000, she indicated that staff would like the additional time for the public to have opportunity to review and provide comments on the document.

Ms. Fryer presented the Staff Report, mentioned that the proposal requests two map amendments as two new mapping layers to the existing Significant Natural Resource Maps, one layer of which is the Local Wetland Inventory which contains actual wetlands, and the second layer contains the Urban Riparian Assessment. She requested that the Planning Commission incorporate by reference the materials that were part of the original package and any of those have been modified by this particular package. Noting that Shapiro and Associates had conducted the initial Wetland Inventory in 1998, based on the Goal 5 Requirements, she noted that they had also followed the Urban Riparian Assessment Guide. Observing that the Local Wetland Inventory follows a specific, prescribed methodology, she mentioned that the wetlands that are not listed are subject to regulatory control through DSL and the Corps of Engineers. Wetland boundaries may be modified or may be more accurately delineated in a wetland delineation. Where wetland delineations have been completed or fill permits have been issued, they are noted on the pages. She clarified that the notations DSL (Division of State Lands) or DET indicate that a delineation has been made and approved by DSL, with a specific number associated with that

delineation to provide a reference to that particular file. The more accurate boundary from that delineation would be more appropriately utilized for actual development. Noting that a Fill Permit is identified on the map as FP-with a specific number, she emphasized that this information is more accurate than any information on the Local Wetland Inventory and this information would be utilized for development purposes.

Ms. Fryer observed that per the minimum requirement in the DSL regulations, only those wetlands greater than 0.5 acres were assessed. She clarified that regardless of whether a wetland is mapped or not, a property owner is subject to the regulations of the Division of State Lands, the Army Corps of Engineers and the Unified Sewerage Agency.

Ms. Fryer identified that the typical Goal 5 process consists of a two-part process: 1) Inventory; and 2) ESEE (Economic, Social, Environmental and Energy) Analysis; indicating that this Local Wetland Inventory is only the inventory portion of this process. A program decision has not yet been made to determine whether an ESEE Analysis will be completed on any of the areas involved, and a program decision has not yet been made to determine the content of the regulatory framework. Explaining that the City of Beaverton has several options, including completion of the ESEE Analysis or adoption of a safe harbor ordinance, and both approaches will be pursued as a secondary amendment, most likely this summer. At this time staff will also propose additions to the Development Code and the Comprehensive Plan that are required to provide a variance procedure, in addition to the one currently utilized, that will allow changes to the Local Wetland Inventory to address map errors. A requirement for notification to DSL in the event of a development proposal with the potential of impacting an area identified on the map will be developed.

Ms. Fryer stated that a number of planning efforts have occurred since the initiation of this inventory, specifically that the West Coast Steelhead and spring-run Chinook for the Upper Willamette Evolutionary Significant Unit (ESU) has been listed as threatened by the National Marine Fisheries Service (NMFS). She mentioned that federal regulations have been drafted and will be finalized by June 2000, adding that a proposal will allow local jurisdictions in the Metro area to proceed with urban development consistent with Metro regulations that are yet to be adopted. She indicated that draft regulations are depicted on maps available on the wall, pointing out that the "gray" areas represent "no-touch" zones, under the current draft Goal 5 Regulations being explored by Metro, which will serve as the basis for compliance with the proposed 4(d) Rule. She discussed Metro's adoption of Title 3, which responds to water quality and quantity issues, which requires throughout most of the City of Beaverton a 50-foot setback from the top of a bank or the edge of a wetland. She advised that United Sewerage Agency (USA) had also adopted new rules which have been deemed to comply with the Title 3 Regulations adopted by Metro. At a minimum, these USA Regulations would apply to any wetland identified in this document, regardless of whether it is

included on the map or not. She emphasized that all of these provisions provide protection greater than the existing State Goal 5 Regulations of 50-feet on fish-bearing streams. Ms. Fryer stressed that the Local Wetland Inventory information and the Riparian Assessment information are not intended to provide exact boundaries, but merely serve as a red flag to the Planning Counter for development purposes. She advised that although it may appear so on the map, the riparian area boundary is not intended to serve as a setback. She noted that Ms. Hartley had submitted a wetland determination that appears to not be mapped correctly, adding that it will be further explored with the consultant and it is likely that additional replacement pages will be submitted to the Planning Commission for the meeting on April 12, 2000. She advised that staff recommends that the Planning Commission accept any public testimony tonight, consider the issue and allow staff to revisit the areas that have been questioned to determine the accuracy of the boundaries, allow additional time for the public to provide additional comments and continue the Public Hearing until April 12, 2000.

Commissioner Dunham questioned the difference between completing the ESEE Analysis or adoption of a safe harbor ordinance, asking whether it is possible to implement both approaches.

Ms. Fryer advised Commissioner Dunham that this is an option, adding that special treatments may be necessary in some areas. She noted that there might be a need to increase development in some areas, as well as a need to provide further protection in other areas.

Commissioner Dunham questioned utilization of “averaging” and “enhancement”, for purposes of the Local Wetland Inventory.

Ms. Fryer clarified that current USA (United Sewerage Agency) requirements stipulate that any area set aside within the 50-foot buffer (less than 50-feet in some cases) would include an average over the entire parcel. She explained that if someone needed to encroach within that 50-feet on part of the parcel, the remaining portion of the parcel would need to be increased a commensurate amount. In addition, any development that may or may not impact the buffer area, by USA standards, may be required to provide some restoration, such as the removal of blackberries and the addition of native vegetation.

Commissioner Dunham referred to the window for the mapping changes, requesting whether it is open or closed at this time.

Advising Commissioner Dunham that she believes the window for the mapping changes is still open at this time, Ms. Fryer articulated that this is a guideline, noting that a wetland delineation is a more accurate boundary identification, and that is what would be accepted for development purposes.

Commissioner Dunham pointed out that the Local Wetland Inventory indicates that it “did not supercede individual site assessments”, which is encouraging.

Ms. Fryer agreed that Commissioner Dunham had interpreted this correctly.

PUBLIC TESTIMONY:

DON PAULSON, 95 NW 150th Avenue, Beaverton, OR 97006, expressed his concern with the delineation of his property as a wetland. He mentioned a letter he had received in February 1999 indicating a potential affect on the value of his property and urging him to attend a meeting of the Planning Commission on February 24, 1999. Observing that he had attended that meeting, he referred to his testimony in the Staff Report (pages 20-21 of the Planning Commission Minutes of February 24, 1999), adding that this accurately describes his position on this issue. He also referred to map of the property (Map #31, near the end of the Staff Report).

Ms. Fryer clarified that she believes that Mr. Paulson is referring to Map 1N1-32, indicating that the top of the page of the maps in the back contains this reference information, adding that it should be the second page in.

Mr. Paulson referred to the bottom of the map, specifically wetlands delineated as WA2e, noting that during his last testimony he had made the Commissioners aware of a wetland in the long, skinny lot, which is his property. He noted that in the past, the property had been a true wetland that existed across the property where there is no wetland, through his property and through a housing sub-development, and objected to delineating that small area on his property as a wetland. He referred to page 8 of 11 in Appendix 3, and read a portion of the LWI Comment/Response Log, as follows: “Subsequent to receiving this comment Shapiro field verified the mapping of the wetland on/adjacent to Mr. Paulson’s parcel. Shapiro believes the wetland is mapped within the tolerances of the LWI protocols. The wetland drains via an open ditch (which had flowing water at the time of verification) into the larger wetland complex along Pioneer Road and on the Tualatin Hills Park and Recreation District facilities.” Emphasizing that there were two wetlands, he expressed his opinion that they had been speaking of the wetland that is not on his property, adding that there is no ditch on his property that feeds that wetland. He noted that it had been a wetland at one time, but because three major developments had diverted the water from crossing his property, changing the entire environment, he had not objected in the past. Noting that the Tualatin Hills Recreation Department, his neighbor to his south, and the housing development to his north had all changed the environment so that the water no longer crosses his property. He described his property, which includes ash trees, blackberries and other growth, common throughout Oregon. He mentioned that next to his property, to the north, is a subdivision, with a road covered by wetland leading up to the subdivision. He expressed his concern that if this delineation occurs, his property and some neighboring property will not be

developable. He noted that he had hoped to develop his property in the future, emphasizing that it is good land, not a wetland, within the Metro area, and can easily be used for housing development. Stressing that he also objects because USA and Washington County do not have his property designated as a wetland, he informed the Planning Commission that his property is not located within the City of Beaverton. Expressing his opinion that this action will seriously deplete the value of his property, he questioned the authority of the City of Beaverton to take this action that concerns property outside of city jurisdiction and urged consideration of the removal of this wetland from the Local Wetland Inventory.

Chairman Maks thanked Mr. Paulson for his input. He questioned whether this particular wetland has been delineated.

Ms. Fryer clarified that this particular property has not as yet been delineated as a wetland, adding that at this point it has merely been identified as being a wetland.

Chairman Maks advised Mr. Paulson that delineation is a very specific term, adding that because of Federal law and regardless of jurisdiction, a wetland delineation can not be ignored. He reminded Mr. Paulson to remember the property is being flagged as a possibility and has not, at this point, been delineated as a wetland, urging him to keep in mind that any future development of the property will require a wetland delineation.

Mr. Paulson informed Chairman Maks that he understands that he had misunderstood the wetland delineation process.

Chairman Maks observed that a delineation provides a clear boundary of the wetlands and does not automatically cause land to become undevelopable. He clarified that an individual can fill a portion of a wetland if all other reasonable and feasible options halt the development of the property. He mentioned that he had never believed he would permit applicants to fill in wetlands, but because it had been the only way to get a road into a property, he had approved a project so that an applicant could fill in wetlands. Reminding Mr. Paulson that this has only been identified as a possible wetland area, he added that no specific boundaries had been established.

Commissioner Dunham questioned whether the term becomes wetland determination versus wetland delineation.

Chairman Maks clarified that at this time, it is only a wetland identification, and referred to the letter from Laura Hill mentioning red flagged and yellow flagged areas. He explained that wetland areas change over time – they get bigger – they get smaller – they go away – they appear – with development. He discussed a current development of 56 town homes at Brier Gate, noting that 20 years ago, this property near Johnson Creek had been a blank field. The development of

Murray Boulevard and other adjacent areas had created a wet ditch, resulting in riparian-type life, and this property was later identified as a wetland.

On question, Mr. Paulson informed Commissioner Dunham that his address is 95 NW 150th Avenue, Beaverton, OR 97008.

Observing that the map changes remain open at this time, Commissioner Dunham commented that the 185th Avenue designated on this document is incorrect.

Chairman Maks clarified that the correct street is 158th Avenue, rather than 185th Avenue.

Commissioner Dunham pointed out that the document indicates 185th Avenue.

On question, Ms. Fryer informed Chairman Maks that this is a Local Wetland Inventory, adding that a wetland determination is a specific term used by the Division of State Lands that means that a reasonable assurance occurs that there is a wetland on that particular property. A wetland delineation consists of actual field data points with a boundary, based on topography, soils, etc.

Chairman Maks emphasized that Mr. Paulson disagrees with the determination.

Mr. Paulson agreed that he does not agree with the determination.

Commissioner Johansen commented that he had been under the impression that Ms. Fryer had stated that determination is a DSL term.

Ms. Fryer stated that is correct, noting that the wetland identified on Mr. Paulson's property is based on the local wetland inventory criteria located in the document presented tonight. She outlined that the location of the particular wetland is based on aerial photographs, the national wetland inventory information, the U.S. Geological Society maps, the soil survey maps, the presence or absence of water or vegetation and an indication from the Local Wetland Inventory criteria. She added that in all likelihood, the property in question is a wetland.

Commissioner Johansen informed Ms. Fryer that his intent is to make certain that the proper term is used.

Ms. Fryer clarified that this property has been "identified" on the Local Wetland Inventory.

Chairman Maks questioned whether Mr. Paulson is correct that a wetland had been at that location previously but is no longer there.

Ms. Fryer stated that this is potentially true, adding that the consultants had indicated that they had visited the property and identified that a wetland exists there at this time, adding that exactly what that wetland consists of is unclear. She mentioned that this had possibly been determined due to the types of trees, which is an indicator of a wetland, or that there may have actually been water present when the consultants had been there, although they had not actually drawn field points.

Chairman Maks observed that there is the possibility that a true existence of a wetland comes through a delineation.

Noting that this is not standard procedure, Chairman Maks asked if Mr. Paulson has any further questions at this time.

Mr. Paulson mentioned Chairman Maks' observation that a Federal law supercedes any local jurisdiction's determination with regards to a wetland.

Chairman Maks stated that wetlands are wetlands, without any regard for jurisdiction.

Mr. Paulson emphasized that he does not understand why if USA and Washington County have not identified a wetland, why the City of Beaverton, which he is not a part of, is making this determination.

Commenting that this is a good question, Chairman Maks noted that this might be why it is called "updating the maps".

Mr. Paulson noted that while he has been told it is not actually a determination or a delineation, it is on the map, and if he were to sell his property, he would be legally and morally obligated to disclose this information to any potential purchaser.

Chairman Maks agreed, commenting that Mr. Paulson would be responsible to share "properly" what it is – an inventory that indicates that there is a high likelihood that a wetland exists on that property – nothing more and nothing less.

Chairman Maks mentioned Mr. Paulson's reference to jurisdiction.

Agreeing that Mr. Paulson's question regarding jurisdiction is a very good question, Ms. Fryer stated that the City had taken the approach that the Local Wetland Inventory Regulations were developed after Washington County completed their last Goal 5 Update. She observed that the City of Beaverton anticipates, within the next 20 years, the possibility of annexing property in this area, south of Highway 26 and west of the Multnomah County line and east of 170th Avenue, although it could extend even further. In order to have the most accurate information when this occurs, the City had determined that it was

important to inventory these areas so that this most accurate information would be available. Jurisdictionally, it is advisable, until that property annexes to the City of Beaverton, Washington County, in order to implement anything concerning that wetland area, would have to adopt the inventory for the area for USA, the Division of State Lands' and the Army Corps of Engineers. On the other hand, if a wetland is known to be in an area, regardless of whether it has been adopted by any of these jurisdictions, all have the authority to take jurisdiction over the wetland. They would likely require a wetland delineation to determine the exact boundaries of the wetland, and if it is determined that no wetland exists on the property, it would not be subject to their regulatory framework.

Chairman Maks assured Mr. Paulson that he understands his point of view on this issue, adding that he prefers that staff check policies to determine whether the City of Beaverton really wants to take this action. Observing that he understands the reason for the procedure, he expressed his opinion that Mr. Paulson has a valid point.

Mr. Paulson stated that once the property is identified as a wetland, at this point it would be up to him to lift it, comparing this situation to being accused of a crime and having to prove himself innocent. Noting that this creates a financial burden, he stated that he could not be taxed without representation.

Assuring Mr. Paulson that he understands his position, Chairman Maks reminded him that he is attempting to determine whether they really do want to identify areas outside the City limits in our Local Wetland Inventory.

Mr. Paulson expressed his appreciation of the efforts of Chairman Maks and the Planning Commission in listening to his concerns.

Observing that the issue has not yet been resolved, Chairman Maks urged Mr. Paulson to stay in touch.

Mr. Paulson noted that he is now in the position of having to absorb the cost to have someone come out and rebut this decision.

Chairman Maks assured Mr. Paulson that this will not be necessary, adding that if he chooses to have this done, he should make certain that a complete study is done, including any wetlands delineation.

On question, Mr. Paulson informed Commissioner Voytilla that his property is 60 feet wide and 700 feet long, adding that the wetland area is about 60 feet by 125 feet.

Commissioner Voytilla commented that his second question had been the size of the area of this wetland.

Mr. Paulson emphasized that his only access road is identified on the map as within the wetland area.

Commissioner Voytilla informed Mr. Paulson that he is aware of this.

Noting that different areas should be identified with flags, Chairman Maks clarified that Mr. Paulson doesn't know if he has a wetland or how large that potential wetland is and that he is merely going by a little gray area on a map. He proposed that Mr. Paulson's wetlands could possibly consist of only three square feet of buttercups.

Commissioner Johansen questioned the option of adopting the maps that are situated within the City of Beaverton and not adopting the maps designating unincorporated areas and holding them for a possible future annexation. He observed that this way, there would be no adopted map that the City of Beaverton has no actual jurisdiction over.

Ms. Fryer agreed that this is a potential option, emphasizing that the wetlands are connected, because the connectivity of a wetland is very important and wetland boundaries may change based on activity within one particular area versus another particular area. She advised that the overall wetland inventory is intended to provide that connectivity and the overall network of the stream corridors in this area. She reported that she had discussed this issue with the Planning Director, who had indicated that he prefers to adopt the entire Local Wetland Inventory, as written, adding that this could be explored further.

Chairman Maks informed Mr. Paulson that he intends to poll consensus at the end of the hearing, adding that he does not necessarily agree with the Planning Director and would like to determine whether the other Commissioners agree with him. He commented that he would like to provide Mr. Paulson with the proper direction to protect his interests.

On question, Ms. Fryer informed Chairman Maks that she is unsure when Washington County will update their wetland inventory and that she does not believe that they are currently in periodic review. She noted that the amendments that Washington County is currently proposing are intended to bring them into compliance with the Metro regulations, adding that they are not required to update the Goal 5 maps until periodic review.

Chairman Maks thanked Mr. Paulson for his input and comments on this issue.

Mr. Paulson expressed appreciation to Chairman Maks for listening to his concerns, commending Ms. Fryer for her courteous and professional response to his requests.

PUBLIC TESTIMONY:

PHILLIP FRENCH 9396 SW 171st Avenue, Beaverton, OR 97007, stated that his issue remains the same as it has been in his previous testimony, noting that he had reviewed the Local Wetland Inventory and reached the conclusion that perennial stream and a riparian stream have not been identified or located correctly. He commented that he had submitted a great deal of documentation, adding that it is included in the document. He noted that little tags attached to his copy of the document reference his documentation, both written and testimonial, and yet the stream had been drawn incorrectly. He pointed out that he had distributed a cover letter with six attachments, and referred to the first attachment, noting that as a result of his documentation, a dotted line indicating the stream had been added, although he had designated the correct route of the stream with a red line. He mentioned that the owners of several parcels that had been completely omitted should be concerned. Observing that this stream had been mischaracterized as “intermittent”, he noted that as a resident of this area, he can attest that water is present constantly, flowing heavily in the winter and just a trickle in the summer, which classifies it as perennial. He stated that his attachments would provide documentation to back this up. He commented that the area surrounding this perennial stream in the study should be identified as a riparian, rather than an intermittent stream, which requires it to be considered as a riparian area. He explained the first attachment, Section 30 of the final map in the report, noting that it verifies that the stream had been located incorrectly at its widest point by over 500 feet. He stressed that this error needs to be corrected, adding that if the area he is identifying is perennial, then the other area must be perennial as well, although the entire dotted line should be a solid line. He referred to the second attachment, which is Metro’s Title 3, adopted June 18, 1998, adding this water quality and flood management area map identifies the area he is referring to as a primary protected water feature. He pointed out that it is identified as a perennial stream and the riparian is correctly identified as a shaded area and emphasized that the Wetland Inventory Map really needs to be consistent with this map. He referred to the third attachment, which is a Riparian Goal 5 Study currently underway at Metro, who has also identified this as a perennial stream and have correctly identified the riparian area. Although it does not show up real well on the copy, most of this riparian area includes dots, which indicates the steeply-sloped ravines that are located there. He referred to the fourth attachment is from the Lower Aloha Reedville Cooper Mountain Community Plan, and is identified as a wildlife habitat, with the stream correctly identified with a big green blotch and star around it. Part of the legend states “and forested areas coincidental with water areas and wetlands”. Although there has been some development to the northwest of this area, specifically where the star is located within the blotch, that development is no longer there – a housing development is located on that particular site, and the narrow riparian area along the stream still exists. He referred to the fifth attachment from the Beaverton Creek Watershed Planning Project JS-01 that also shows that particular stream as being a part of the Watershed Project.

Chairman Maks questioned who prepared this particular map.

Mr. French informed Chairman Maks that this fifth attachment is a USA map. He referred to the sixth attachment, which consists of his attempt at visual documentation -- two pictures he had taken on March 19, 2000. Noting that they are not real clear, he added that the flowing water can actually be seen and they are representative of the area along the entire stretch he has drawn in on the first map. He urged the Planning Commission not to accept the report as it stands, and to insist that this perennial stream be correctly characterized and located and the riparian identified to be consistent with the rest of the documentation available, some of which has been very recently drafted. He pointed out that the Goal 5 Metro Map draft had been obtained by him at a Metro Open House only last month. He emphasized that he does not understand why this information and information he has previously provided to the consultants is not included in this report. He expressed his opinion that the consultants had not been at the site if they had incorrectly drawn it by such a wide margin. Stressing that this really needs to be included, he stated that he is at a loss to understand why all of this documentation is not included in the Local Wetland Inventory. He requested that the Local Wetland Inventory not be approved until it has been updated with respect to this water feature and made consistent with the rest of the related studies.

Chairman Maks referred to page 8 of 11 of Appendix 3, specifically the comment that "Local Wetland Inventory has been modified within the study area (western boundary 170th Avenue), requesting clarification of Mr. French's statement that this has not been done.

Noting that previously the dotted line had not been present on that particular map, Mr. French commented that they had actually claimed that there was no stream at that location. He mentioned a discussion that took place in the offices of Shapiro, noting that he is on the Citizen Advisory Committee, most of whom were present at that discussion at which time they had actually located that particular stream on an aerial map. He reported that they had asked him whether there are fish in that stream and he had indicated that there are not, although he had described the foliage, at their request, which consists mostly of cedar, alder and fir. He added that they had asked him at that time whether the stream is perennial, and that he had informed them that water is in there and that it is perennial. He stated that he believed it was Dan Carey recording the information, adding that DSL was represented as well and that everyone had agreed that this stream should be included on the map. He expressed concern that it had not only not been listed as a perennial on the map, but it had been incorrectly drawn as well, so even though it had been updated, it had been updated incorrectly.

Chairman Maks assured Mr. French that he wants to be certain that his issues are addressed. He repeated Mr. French's concern that the line is drawn incorrectly.

Mr. French agreed that the line is drawn incorrectly.

Chairman Maks noted that Mr. French indicated that the stream is perennial, rather than intermittent.

Mr. French agreed that the stream is perennial, not intermittent, adding that if the stream is classified as perennial, then the surrounding area should be classified as a regulated riparian, per the study rules. He noted that the reason it is not identified and grayed in as a riparian area is because it is currently listed as an intermittent stream.

Chairman Maks repeated Mr. French's assessment that if the stream is considered perennial, the surrounding area should be classified as a regulated riparian.

Mr. French agreed that this is correct, that the stream is perennial and the surrounding area is a regulated riparian. He commended that he is impressed with the documentation, particularly the Metro documentation, which had actually identified the slopes, adding that it is a very accurate map. Noting that he lives very close, he emphasized that he is very familiar with the area.

Chairman Maks expressed appreciation to Mr. French for the documentation he had provided, adding that it had been very well prepared. He advised Mr. French that the Planning Commission does not adopt documents that are in draft form.

Mr. French informed Chairman Maks that he had merely submitted the information for consideration of the Planning Commission, adding that he believes only one of the attachments is in draft form.

Chairman Maks observed that some of this documentation should probably be included, adding that he would not consider adopting a Metro document that is still in draft form.

Noting that he had observed some of the Metro workings, Mr. French assured Chairman Maks that this particular document is not going to change and that they are going to adopt this at some point and it will be on their maps.

Chairman Maks expressed his agreement with Mr. French regarding this document.

Chairman Maks highlighted the areas concerning Mr. French, specifically the incorrectly drawn line, the stream being perennial rather than intermittent, and the riparian area surrounding the intermittent stream. Chairman Maks commended Mr. French for his excellent presentation of issues regarding the Local Wetland Inventory.

Commissioner Voytilla questioned Mr. French's involvement with this particular property.

Mr. French informed Commissioner Voytilla that he actually lives on the other side of 170th Avenue, adjacent to the property he is concerned with, adding that he has no personal interest in the property other than the protection of a wildlife habitat and a perennial stream.

Commissioner Voytilla mentioned the draft document provided by Mr. French and questioned development activity in the northwest corner.

Mr. French confirmed that this development is included on the map, adding that when he had identified the development, he had been referring to the slightly obsolete community plan. He noted that construction is underway at this time at the location where the streets are drawn in (Colding Street and 98th Avenue), adding that this construction encroaches somewhat on the adjacent riparian area.

Commissioner Voytilla observed that he is curious, if Mr. French has been tracking this issue, whether a delineation has been performed. Noting that he is aware that this is a draft map from another agency, he questioned the accuracy of this documentation.

Mr. French confirmed that he believes this documentation is very accurate, with the exception of the houses, which are not there currently.

Commissioner Voytilla remarked that he understands that the houses are not yet there.

Mr. French informed Commissioner Voytilla that the streets are in.

Commissioner Voytilla commented that the subdivision has been approved, showing a lotting pattern and street improvements.

Mr. French clarified that to be technically correct, they should have followed the actual boundary of the lots, and not called that a riparian...

Commissioner Voytilla stated that this is true, if it is as significant as Mr. French is indicating.

Mr. French pointed out that he understands there may be an encroachment -- that part of the mitigation for allowing development in this area provided for the sale of the south part of this parcel, which happens to be a Metro green space.

Commissioner Voytilla questioned the status of the balance of the property.

Mr. French informed Commissioner Voytilla that the balance of the property on the other side of the stream, which he indicated as a large flagged lot on the map, is a Metro green space. He stated that the developer had negotiated to sell this

area to Metro in return for being allowed to develop in the adjacent area, adding that Washington County had conducted Public Hearings and approved these actions.

Commissioner Voytilla questioned whether the issue had been studied to determine how much area would be impacted, and whether mitigation had been done.

Emphasizing that he is not completely certain that mitigation is the correct term, Mr. French assured Commissioner Voytilla that action had been taken to be certain that Metro would not resist the development under the condition that a portion of the property was sold as a green space. Observing that there had been community uproar over this particular project, he stressed that Washington County had reviewed the issue and made provisions that the development be located quite a distance from the stream. Washington County had imposed strict conditions upon the developers: 1) to stay 200 feet from the stream; 2) not to clear cut; 3) not to take out trees during the initial development; and 4) individual owners were required to go through a particular process prior to removal of any trees. He reported that an environmental study had been performed early in the process, although he is unable to reference it at this time.

Commissioner Voytilla expressed his appreciation to Mr. French for his input.

Chairman Maks expressed his appreciation to Mr. French for his input.

PAT RUSSELL 16308 SW Estuary Drive #208 (King's Court), Beaverton, OR 97006, stated that .he had not come prepared this evening, although he had been tracking Title 3, Metro's Green Space Program. He observed that he had brought all of the Metro maps to the CCI Meeting to be distributed to all the NAC groups, adding that he had encouraged them to review the maps to make certain that they believe that the maps are representative of their neighborhoods. He expressed his opinion that public involvement is inadequate, adding that he is very impressed with the professionalism of all testimony this evening although he does not feel that neighborhoods know what is going on. He noted that Commissioners go through appeals, Conditional Use Permits and legislative review processes, adding that there seems to be a tremendous uproar over projects in the wetlands. He mentioned that he feels that they are being extremely myopic in the exercise tonight over the Local Wetland Inventory Program.

Emphasizing that he believes it is a good effort – it's a start – Mr. Russell stressed that anyone who doesn't want to call anything under a half an acre a wetland, or call it insignificant or significant – is making a big mistake. Emphasizing that Beaverton, historically, is probably 80% wetlands, he stated that we have an obligation to our grandchildren to make every effort to utilize every possible opportunity to improve our wetland corridors. Noting that there are no fish out there today, he mentioned unsubstantiated reports of fish, such as a letter from a

Mrs. Hill stating that there are fish in Willow Creek. He reported that he had heard reports of salmon at the new Petercourt Center many years ago. He pointed out that it is very clear, with the inventory we are seeing, we have literally decimated some very productive riparian areas of the Tualatin River and have a responsibility to go back and attempt to repair that damage. He expressed concern that we are nickel/diming anything that looks wet and calling it a wetland. Although we don't know if it is a wetland, we don't want to lose it. He expressed his concern with dealing with the fisheries agencies, at the federal level, emphasizing that State standards have not been recognized by the National Marine Fisheries Service (NMFS), although they have indicated some approval of the Metro effort.

Mr. Russell questioned what the City of Beaverton is doing in terms of the federal concerns, pointing out if this is not taken seriously, some US Wildlife Marshalls may show up at City Hall to make sure no building permits are issued. Noting that he is not attempting to create a threat, he stated that he wants to stress the importance of this issue. Observing that he is sorry that more citizens have not shown up, he apologized for being unable to provide more detail. He expressed approval of Mr. French's efforts to call attention to certain issues, and stated that he understands Mr. Paulson's position regarding his own property. He mentioned that there are cases in the State where people built on wetlands – their houses are actually on stilts. He observed that he has learned that if a site is not included in a City's inventory and the property is subject to a development review process, DSL will not touch it, particularly if the City decides it is insignificant. Even if a site is considered significant, DSL does not necessarily touch it. He mentioned a property within the City of Hillsboro that DSL will most likely not touch, although it is designated wetland, adding that the developer has proposed subdivision right over the top of the wetland, which is less than a half an acre and not considered significant. He emphasized that this does not even include the riparian discussion that Metro is attempting to propose.

Mr. Russell expressed his approval of the maps provided by Ms. Fryer, adding that although the downtown Beaverton area is virtually 100% wetlands, these maps designate no wetlands in downtown Beaverton. Noting that this concerns him, he stated that he gets suspicious of individuals who try to nickel/dime these wetland designations and expressed his hope that there are no conflicts of interest in this legislative matter, although it is not as serious as a quasi-judicial issue. Emphasizing the importance of salmon recovery, he suggested a better effort with the neighborhood groups to get them to understand what is going on. He referred to letters of support and comments from Michael Houck and Laura Hill, who represent his feelings. He identified ditches, culverts and pipes as wetlands, noting that although they are man-made, they have replaced wetlands, in effect, and this should not be ignored. He urged the Planning Commission to take Metro's goals and NMF's goals and comments on the 4-d rule seriously.

Mr. Russell expressed disagreement with Chairman Maks' criticism of Metro without a specific case in mind. Noting that as a regional government, Metro does make mistakes, he pointed out that he is personally very impressed with their level of detail for a regional agency. He added that they should be given credit for their efforts, noting that the City of Beaverton should do a better job than Metro. He expressed his appreciation of this opportunity to comment on the Local Wetland Inventory, adding that he will report to his NAC and find out if they really care about fish. If they don't, at least he has done his part. He stated that he is very concerned with intermittent streams that are located on the maps that are not being shown in these documents. He reported that one of these intermittent streams is located near an elementary school, adding that if we intend to teach our grandchildren the attitude of fisheries and clean water, this particular stream would provide a unique opportunity. He noted that he believes a portion of this property is actually owned by the school district and this unique riparian area includes Ponderosa Pine, Douglas Fir, Oregon Oak, plus an ash mix, which provides an interesting setting in that neighborhood. He noted that the wetland in the middle of his apartment complex is not significant because everything around it has been destroyed, although there are Ponderosa Pine, Douglas Fir, Oregon White Oak, and in the wetlands areas, some very significant stands of ash. He questioned how many other areas have been affected.

Mr. Russell discussed the Waterhouse South, which included intermittent streams, connected to the wetland he lives in, although it is now called 167th Avenue and Estuary Drive, which is ironic, since it is no longer a wetland. He expressed concern with linkages, getting potential habitats and making every effort to get these fish back upstream. He explained that it has been shown around the country that where you improve habitat, you do get surprised, adding that he is in support of this for the Tualatin River. He expressed appreciation for the opportunity to express his views on this issue, adding that he is sorry more members of the community did not come to offer their comments on this packed-house issue.

Mentioning that Mr. Russell had identified several sites that need to be included in the Local Wetland Inventory, Commissioner Voytilla emphasized the importance of this document and asked that Mr. Russell provide written documentation.

Mr. Russell agreed to attempt to provide this written documentation, and discussed reviewing of the areas that have already been disturbed, covered over and put into pipes, with the result that the historic wetlands are no longer there. He discussed his concern that it is necessary to go back and determine how to repair those linkages that have been disrupted. He mentioned that the wetlands throughout the City of Beaverton consist of a splotch here and a splotch there, adding that where that water is actually going is a valid issue. Some of this water is traveling down Greenbrier Boulevard, which is now in a ditch. Noting that he could provide 40 pages of intermittent streams and ditches, he stated that he is aware that this would not resolve tonight's issue. He noted that he understands

that they are attempting to inventory wetlands that are actually obvious to people in the City, adding that he is attempting to go beyond that. Observing that many mistakes have been made, he commented that he had participated in the general plan in 1973, noting that it had already been basically adopted by the time he became involved as a junior planner. He pointed out that at that time, people were not concerned with streams as water quality issues, as habitat issues or as riparian issues. He observed that a lot of progress has been made in this area, with regard to past errors in how estuaries and riparian areas are viewed in the Tualatin River Basin. He stated that he is very pleased to find that the National Marine Fisheries Service has said that the urban areas are extremely important to the habitat of the salmon in the Willamette River and the Columbia River.

Chairman Maks informed Mr. Russell that they are currently sitting in a Floodplain.

Noting that he had been hesitant to make that observation, Mr. Russell noted that he is aware that the City Hall is located within a Floodplain.

Chairman Maks expressed appreciation to Mr. Russell for his efforts at CCI, requesting that he continue his efforts. He commented that it is very frustrating that more members of the public did not provide testimony at this Public Hearing. In spite of the efforts of CCI to provide information for citizen involvement, no members of the general public had responded. He pointed out that several years down the road is when the public complains and questions actions taken at this time, through a legislative process. He assured Mr. Russell that he had not meant to insinuate that Metro doesn't do anything well, but that they do create many drafts of documents, which he feels is detrimental to citizen involvement. He commented that it is extremely difficult to provide good input when the target is moving, and assured Mr. Russell that he will not get started on his squirrel stories at this particular time. He expressed his full approval of Metro's Regional Framework Document in regard to natural resources. He urged Mr. Russell to attempt to convince more of the public to attend the continued Public Hearing on the Local Wetland Inventory, noting that people who live in the neighborhoods are the most familiar with the characteristics of those neighborhoods.

Mr. Russell expressed his appreciation of Chairman Maks' comments.

Chairman Maks observed that there are no other members of the public wishing to comment on this Public Hearing and asked if staff has any further comments.

Ms. Fryer observed that Mr. French had presented some very valid points regarding the wetland that is located near 170th Avenue, adding that she intends to contact Washington County and the Division of State Lands to attempt to find out where these wetland determinations or delineations are for the two properties.

Mr. French clarified that he had not characterized this property as a wetland, that he had called it a riparian perennial stream, noting that there is a difference.

Ms. Fryer stated that this is correct, adding that there would have been a wetland delineation done for the development for that area.

Chairman Maks informed Mr. French that Ms. Fryer is referring to the subdivision that is adjacent to that area, adding that if it was truly a riparian area, it would have had a delineation.

Ms. Fryer observed that Mr. French is correct that there was a controversy surrounding the southerly "L"-shaped parcel, most of which was purchased by Metro, although the City of Beaverton and the Tualatin Hills Park and Recreation District both provided portions of the funds with green spaces money. She agreed that there should be some information available on that particular parcel and apologized for not including it. She noted that she would make certain that the more accurate information would be made available. She mentioned that she intends to request that the consultants revisit the area that extends into the most southerly two parcels, adding that those issues should be addressed and an additional map page will be submitted in time for the continued Public Hearing in April 2000.

Referring to comments made by Mr. Russell, Ms. Fryer emphasized that this process has involved an incredible amount of public involvement. When the project was initiated, notification had been distributed to everyone in the City of Beaverton that might have been affected by the wetlands. Two letters were sent to each NAC chair and to CCI requesting participation in the CAC Committee, and there was no response. Individuals who live outside the City limits, such as Mr. French, who actually care that much about the City, sat on the Committee. Despite all efforts, CCI and the NACs chose not to become involved in this process. She commented that there have been three open houses attended primarily by the property owners, despite notification to each NAC chairperson and to CCI, as well as several meetings of the Planning Commission, emphasizing that to her knowledge, no one representing any of the NACs or CCI attended any of these meetings. Noting that these individuals receive every notification and every Staff Report concerning this action, with respect to public involvement, she expressed her opinion that they have had every opportunity to participate. She added that every attempt has been made to solicit as much public comment and obtain as much public feedback as possible, prior to even being submitted to the Planning Commission, so that these maps could be as accurate as possible.

Ms. Fryer referred to Appendix 1, noting that the first page identifies the Oregon Administrative Rules, specifically 141-086-0200, which actually defines delineation, determination and inventory. She mentioned that this particular process was designed to create a uniform wetland determination statewide for wetlands, under the jurisdiction of DSL. While it is possible to go beyond the

parameters of the Local Wetland Inventory, for the purpose of salmon, water quality or water quantity, and this particular document must comply with Goal 5 Regulations, regardless of any other planning processes that are in place. She advised that the map can be supplemented with the adoption of a Metro map that identifies Title 3 areas or the Goal 5 Riparian areas, but this particular process must comply with the regulations that are in place. This is no longer a voluntary requirement as it was previously -- the 1996 amendments to Goal 5 had designated this as a mandatory requirement. The requirements are very clear in the methodology that must be followed, and while it may be desirable to include additional wetlands, this is not within the parameters of this particular exercise.

Observing that he will not close the Public Hearing because additional testimony will be received at the continued Public Hearing, Chairman Maks requested some direction from staff regarding Mr. Paulson's concerns -- the jurisdictional issue whereas an area outside the Beaverton issue being identified on this map. He suggested that he would like some sort of a chart designating what is gained and what is lost under these circumstances. Noting that he understands the annexation issue, he added that this information might be helpful to the new Commissioners who are unfamiliar with this issue. He expressed his opinion that Mr. Paulson had brought up some very valid issues, adding that he does believe in property rights. He questioned the opinions of the other Commissioners with regard to Mr. Paulson's situation.

Commissioner Dunham commented that she would like staff to provide further information on this issue before she makes any decision regarding Mr. Paulson's situation.

Commissioner Voytilla noted that he understands the connectivity issue, expressing his concern with spending City funds to identify resources that are actually outside the city limits at this time. He questioned the status of Washington County in this process, adding that he would like to receive information on this as well.

Commissioner Bode stated that she is glad that she met Mr. Paulson. She pointed out that he had come here for an answer and the best answer he had received had been to wait while more information is gathered. She commented that she clearly understands his question of property rights and why the City of Beaverton is utilizing resources to evaluate his property when he is not actually annexed into the City, adding that this needs to be clarified. She urged Mr. Paulson not to leave tonight feeling defeated or reach any conclusions until the Planning Commission has had the opportunity to attempt to resolve this issue to the satisfaction of all concerned, adding that she hopes he will continue to be patient and work with them.

Mr. Paulson mentioned his understanding of the process.

Chairman Maks indicated that the public testimony for this Public Hearing is complete for this evening and more will be accepted at the continued Public Hearing.

Indicating that he is not prepared to make a decision on the issue regarding Mr. Paulson's property at this time, Commissioner Johansen expressed his opinion that the staff has a burden to prove why this action is necessary.

Commissioner Voytilla questioned the property identified by Mr. French, noting that the boundary of the study is 170th Avenue, which is generally the westerly boundary throughout the study. He mentioned that certain areas of the City are being considered for annexing purposes in the future that are on the north flank of Cooper Mountain. He stressed that it is inconsistent that these properties are not included along with Mr. Cooper's property, since they are just as likely to be annexed in the future as well, adding that he feels this is arbitrary.

Ms. Fryer clarified that the area that is currently within the City limits, out to 185th Avenue from the Tualatin Valley Highway north had been assessed under this Local Wetland Inventory. She advised Commissioner Voytilla that in that area there exists a solidified boundary with the City of Hillsboro in terms of 185th Avenue being the boundary, with the exception of the small portion of Hillsboro that is east of 185th Avenue. For the area south of the TV Highway, the current gentlemen's agreement is 170th Avenue, although they are currently negotiating a larger boundary. She noted that at the time of this request for proposals for this particular exercise, the common boundary was 170th Avenue, and the decision on requesting consultants to bid on the particular project had been based upon that 170th Avenue boundary. She emphasized that although it hasn't been adopted, it is an agreement between the City of Beaverton and the City of Hillsboro that 170th Avenue is the current western boundary, although the agencies are currently exploring the possibility of extending to 209th Avenue or anywhere in between.

Chairman Maks indicated that more testimony and discussion would occur at a later date, urging Mr. Russell to attempt to convince CCI to participate in this process.

Commissioner Bode **MOVED** and Commissioner Dunham **SECONDED** a motion to continue the Public Hearing on CPA 99-00005/CPA 99-00006 Local Wetland Inventory to a date certain of April 12, 2000, to allow for additional public testimony.

Motion **CARRIED** unanimously.

NEW BUSINESS:

Chairman Maks discussed the upcoming work session, requesting that Commissioners provide input regarding what they would like to cover at this session.

Commissioner Bode requested the Conditional Use Permit Application process be covered at this work session.

Noting that he had not considered this topic, Chairman Maks expressed his approval, adding that he would also like to include an explanation with regard to legislative actions.

Commissioner Bode suggested the possibility of discussing personal liability issues at this work session.

Chairman Maks agreed that personal liability might also be a relevant subject to discuss, adding that he will request that the City attorney address this issue.

Commissioner Bode informed Chairman Maks that there is one additional issue she would like to explore at this workshop.

Chairman Maks suggested that this workshop be referred to as *Bode's Workshop*.

Commissioner Bode questioned the origin of a rule designating that the most junior member of the Planning Commission is required to cast the first vote.

Commissioner Bode questioned the possibility of the most junior member waiving the right to cast the first vote and cast the final vote.

Chairman Maks said that this is actually possible, although the Planning Commission does not do it that way. He informed Commissioner Bode that he randomly calls for votes.

Commissioner Bode requested clarification of Chairman Maks intent not to follow the procedure explained by Mr. Naemura at last week's meeting.

Chairman Maks confirmed that they would not follow this particular procedure unless Mr. Naemura informs him that it is necessary. Assuring Commissioner Bode that it is not uncommon for him to disagree with Mr. Naemura, he repeated that he randomly polls the Commissioners for their votes. He advised her that in his opinion, Mr. Naemura had specified that a roll call vote should be addressed in this manner.

Commissioner Bode commented that she now understands this issue.

Commissioner Johansen suggested reviewing the recruitment process for potential members of the Planning Commission.

Chairman Maks informed Commissioner Johansen that Mayor Drake has assured him that there will be a new alternate member of the Planning Commission.

Commissioner Voytilla identified town centers as a topic he would like discussed at the workshop.

Observing that a workshop session does not provide sufficient time to discuss town centers, Chairman Maks reminded Commissioner Voytilla that he had served on the special Planning Commission for Washington County with him.

Commissioner Voytilla clarified that he would like to discuss where we are going with town centers at this workshop.

Observing that he is not aware if the City of Beaverton will be adding any additional town centers, Chairman Maks agreed that town centers could be discussed at this workshop.

Chairman Maks noted that although Commissioner Dunham had contacted him at work to let him know what she would like to cover at this workshop, he has forgotten, although he believes she had suggested a discussion of quasi-judicial and ex parte proceedings. He added that she is welcome to contact him again if she thinks of any additional topics.

Commissioner Dunham agreed with Chairman Maks, emphasizing that she is interested in a discussion of procedural issues.

Chairman Maks suggested consideration of changing the by-laws to provide that the most junior member of the Planning Commission is always required to cast the first vote.

Emphasizing that there will be no meeting on Wednesday, March 29, 2000, Chairman Maks advised that everyone enjoy the week off because the Planning Commission has a full schedule every week through the middle of May, adding that this includes numerous quasi-judicials.

Commissioner Dunham observed that a calendar outlining the schedule used to be available.

Chairman Maks reminded Commissioner Dunham that this calendar was only on legislative and periodic reviews – not on quasi-judicial, adding that they do not know when a quasi-judicial will be scheduled.

Chairman Maks proposed that the workshop be scheduled for the next open date, suggesting that this work session start at 6:30 p.m. on a Wednesday.

Commissioner Bode agreed that 6:30 p.m. would be acceptable.

Chairman Maks noted that there would be pizza and Pepsi prior to the workshop.

MISCELLANEOUS BUSINESS

The meeting adjourned at 8:50 p.m.

CALENDAR:

<i>April</i>	<i>5</i>	<i>7:00 p.m.</i>	<i>Public Hearing</i>	<i>TA 99-00015 – APPLICATION SUBMITTALS</i>
			<i>Public Hearing</i>	<i>TA 2000-0001 – PARKING STANDARDS TEXT AMENDMENT</i>
			<i>Public Hearing</i>	<i>TA 2000-0002 – 2000 OMNIBUS TEXT AMENDMENT #1</i>
			<i>Public Hearing</i>	<i>TA 2000-0003 – UTILITY UNDERGROUNDING TEXT AMENDMENT</i>
<i>12</i>	<i>7:00 p.m.</i>	<i>Public Hearing</i>	<i>CPA 99-00025 – COMPREHENSIVE PLAN LAND USE ELEMENT (cont. from March 15, 2000)</i>	
		<i>Public Hearing</i>	<i>CPA 99-00005/CPA 99-00006 – LOCAL WETLAND INVENTORY (cont. from March 22, 2000)</i>	
		<i>Public Hearing</i>	<i>TA 2000-0004 – TITLE 4 IMPLEMENTATION TEXT AMENDMENT</i>	
		<i>Public Hearing</i>	<i>TA 2000-0005 – TITLE 2 AND FEMA IMPLEMENTATION TEXT AMENDMENT</i>	